

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States

v.

Case No. 98-cr-131-01-SM


Chad E. Austin

ORDER

Re: Document No. 91, MOTION for Rule 52 - Findings and Conclusions re: Endorsed Order denying [85] Motion to Correct Illegal Sentence

Ruling: Granted. The motion, in reality, seeks to challenge defendant's sentence, and is properly considered as a petition seeking relief under the provisions of 28 U.S.C. Section 2255. As such, it is a second or successive petition which the United States Court of Appeals for the First Circuit has not authorized this court to consider; and, on its face it is untimely as it is filed well beyond one year after defendant's conviction became final, and well beyond one year after the date on which the facts supporting the claim asserted could have been discovered through the exercise of due diligence (in this case, defendant seems to assert that his state sentence was corrected in 2006, and that fact seems to form the basis for his current claim for federal relief); and, the federal sentence is to be served in part concurrently and in part consecutively to the state sentence, however corrected. That the state reduced its sentence is not a fact that would likely result in a reduction of the federal sentence even if the issue were subject to reconsideration pursuant to defendant's current motion. See 28 U.S.C. Sections 2255(f) and 2244.

Date: April 29, 2013


Steven J. McAuliffe
United States District Judge

cc: Chad E. Austin, pro se
Donald A. Feith, FAUSA